

**Introduced by Senator Aanestad**

February 14, 2009

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An act to amend Section 12072 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 175, as introduced, Aanestad. Firearms.

Existing law generally regulates the transfer of firearms, including prohibiting a licensed firearms dealer from supplying, selling, delivering, or giving possession or control of a handgun to a person under 21 years of age.

This bill would make a technical, nonsubstantive change to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 12072 of the Penal Code is amended to  
2     read:  
3     12072. (a) (1) No person, corporation, or firm shall knowingly  
4     supply, deliver, sell, or give possession or control of a firearm to  
5     any person within any of the classes prohibited by Section 12021  
6     or 12021.1.  
7     (2) No person, corporation, or dealer shall sell, supply, deliver,  
8     or give possession or control of a firearm to any person whom he  
9     or she has cause to believe to be within any of the classes  
10    prohibited by Section 12021 or 12021.1 of this code or Section  
11    8100 or 8103 of the Welfare and Institutions Code.

1 (3) (A) No person, corporation, or firm shall sell, loan, or  
2 transfer a firearm to a minor, nor sell a handgun to an individual  
3 under 21 years of age.

4 (B) Subparagraph (A) shall not apply to or affect those  
5 circumstances set forth in subdivision (p) of Section 12078.

6 (4) No person, corporation, or dealer shall sell, loan, or transfer  
7 a firearm to any person whom he or she knows or has cause to  
8 believe is not the actual purchaser or transferee of the firearm, or  
9 to any person who is not the person actually being loaned the  
10 firearm, if the person, corporation, or dealer has either of the  
11 following:

12 (A) Knowledge that the firearm is to be subsequently loaned,  
13 sold, or transferred to avoid the provisions of subdivision (c) or  
14 (d).

15 (B) Knowledge that the firearm is to be subsequently loaned,  
16 sold, or transferred to avoid the requirements of any exemption to  
17 the provisions of subdivision (c) or (d).

18 (5) No person, corporation, or dealer shall acquire a firearm for  
19 the purpose of selling, transferring, or loaning the firearm, if the  
20 person, corporation, or dealer has either of the following:

21 (A) In the case of a dealer, intent to violate subdivision (b) or  
22 (c).

23 (B) In any other case, intent to avoid either of the following:

24 (i) The provisions of subdivision (d).

25 (ii) The requirements of any exemption to the provisions of  
26 subdivision (d).

27 (6) The dealer shall comply with the provisions of paragraph  
28 (18) of subdivision (b) of Section 12071.

29 (7) The dealer shall comply with the provisions of paragraph  
30 (19) of subdivision (b) of Section 12071.

31 (8) No person shall sell or otherwise transfer his or her  
32 ownership in a pistol, revolver, or other firearm capable of being  
33 concealed upon the person unless the firearm bears either:

34 (A) The name of the manufacturer, the manufacturer's make or  
35 model, and a manufacturer's serial number assigned to that firearm.

36 (B) The identification number or mark assigned to the firearm  
37 by the Department of Justice pursuant to Section 12092.

38 (9) (A) No person shall make an application to purchase more  
39 than one pistol, revolver, or other firearm capable of being  
40 concealed upon the person within any 30-day period.

1 (B) Subparagraph (A) shall not apply to any of the following:

2 (i) Any law enforcement agency.

3 (ii) Any agency duly authorized to perform law enforcement  
4 duties.

5 (iii) Any state or local correctional facility.

6 (iv) Any private security company licensed to do business in  
7 California.

8 (v) Any person who is properly identified as a full-time paid  
9 peace officer, as defined in Chapter 4.5 (commencing with Section  
10 830) of Title 3 of Part 2, and who is authorized to, and does carry  
11 a firearm during the course and scope of his or her employment  
12 as a peace officer.

13 (vi) Any motion picture, television, or video production  
14 company or entertainment or theatrical company whose production  
15 by its nature involves the use of a firearm.

16 (vii) Any person who may, pursuant to Section 12078, claim  
17 an exemption from the waiting period set forth in subdivision (c)  
18 of this section.

19 (viii) Any transaction conducted through a licensed firearms  
20 dealer pursuant to Section 12082.

21 (ix) Any person who is licensed as a collector pursuant to  
22 Chapter 44 (commencing with Section 921) of Title 18 of the  
23 United States Code and the regulations issued pursuant thereto  
24 and who has a current certificate of eligibility issued to him or her  
25 by the Department of Justice pursuant to Section 12071.

26 (x) The exchange of a pistol, revolver, or other firearm capable  
27 of being concealed upon the person where the dealer purchased  
28 that firearm from the person seeking the exchange within the  
29 30-day period immediately preceding the date of exchange or  
30 replacement.

31 (xi) The replacement of a pistol, revolver, or other firearm  
32 capable of being concealed upon the person when the person's  
33 pistol, revolver, or other firearm capable of being concealed upon  
34 the person was lost or stolen, and the person reported that firearm  
35 lost or stolen prior to the completion of the application to purchase  
36 to any local law enforcement agency of the city, county, or city  
37 and county in which he or she resides.

38 (xii) The return of any pistol, revolver, or other firearm capable  
39 of being concealed upon the person to its owner.

1 (b) No person licensed under Section 12071 shall supply, sell,  
2 deliver, or give possession or control of a ~~pistol, revolver, or~~  
3 ~~firearm capable of being concealed upon the person~~ *handgun* to  
4 any person under the age of 21 years or any other firearm to a  
5 person under the age of 18 years.

6 (c) No dealer, whether or not acting pursuant to Section 12082,  
7 shall deliver a firearm to a person, as follows:

8 (1) Within 10 days of the application to purchase, or, after notice  
9 by the department pursuant to subdivision (d) of Section 12076,  
10 within 10 days of the submission to the department of any  
11 correction to the application, or within 10 days of the submission  
12 to the department of any fee required pursuant to subdivision (e)  
13 of Section 12076, whichever is later.

14 (2) Unless unloaded and securely wrapped or unloaded and in  
15 a locked container.

16 (3) Unless the purchaser, transferee, or person being loaned the  
17 firearm presents clear evidence of his or her identity and age, as  
18 defined in Section 12071, to the dealer.

19 (4) Whenever the dealer is notified by the Department of Justice  
20 that the person is prohibited by state or federal law from possessing,  
21 receiving, owning, or purchasing a firearm.

22 (5) (A) Commencing April 1, 1994, and until January 1, 2003,  
23 no pistol, revolver, or other firearm capable of being concealed  
24 upon the person shall be delivered unless the purchaser, transferee,  
25 or person being loaned the firearm presents to the dealer a basic  
26 firearms safety certificate.

27 (B) Commencing January 1, 2003, no handgun shall be delivered  
28 unless the purchaser, transferee, or person being loaned the  
29 handgun presents a handgun safety certificate to the dealer.

30 (6) No pistol, revolver, or other firearm capable of being  
31 concealed upon the person shall be delivered whenever the dealer  
32 is notified by the Department of Justice that within the preceding  
33 30-day period the purchaser has made another application to  
34 purchase a pistol, revolver, or other firearm capable of being  
35 concealed upon the person and that the previous application to  
36 purchase involved none of the entities specified in subparagraph  
37 (B) of paragraph (9) of subdivision (a).

38 (d) Where neither party to the transaction holds a dealer's license  
39 issued pursuant to Section 12071, the parties to the transaction

1 shall complete the sale, loan, or transfer of that firearm through a  
2 licensed firearms dealer pursuant to Section 12082.

3 (e) No person may commit an act of collusion relating to Article  
4 8 (commencing with Section 12800) of Chapter 6. For purposes  
5 of this section and Section 12071, collusion may be proven by any  
6 one of the following factors:

7 (1) Answering a test applicant's questions during an objective  
8 test relating to firearms safety.

9 (2) Knowingly grading the examination falsely.

10 (3) Providing an advance copy of the test to an applicant.

11 (4) Taking or allowing another person to take the basic firearms  
12 safety course for one who is the applicant for a basic firearms  
13 safety certificate or a handgun safety certificate.

14 (5) Allowing another to take the objective test for the applicant,  
15 purchaser, or transferee.

16 (6) Using or allowing another to use one's identification, proof  
17 of residency, or thumbprint.

18 (7) Allowing others to give unauthorized assistance during the  
19 examination.

20 (8) Reference to unauthorized materials during the examination  
21 and cheating by the applicant.

22 (9) Providing originals or photocopies of the objective test, or  
23 any version thereof, to any person other than as authorized by the  
24 department.

25 (f) (1) (A) Commencing July 1, 2008, a person who is licensed  
26 pursuant to Chapter 44 (commencing with Section 921) of Title  
27 18 of the United States Code may not deliver, sell, or transfer a  
28 firearm to a person in California who is licensed pursuant to  
29 Chapter 44 (commencing with Section 921) of Title 18 of the  
30 United States Code unless, prior to delivery, the person intending  
31 to deliver, sell, or transfer the firearm obtains a verification number  
32 via the Internet for the intended delivery, sale, or transfer, from  
33 the department. If Internet service is unavailable to either the  
34 department or the licensee due to a technical or other malfunction,  
35 or a federal firearms licensee who is located outside of California  
36 does not possess a computer or have Internet access, alternate  
37 means of communication, including facsimile or telephone, shall  
38 be made available for a licensee to obtain a verification number  
39 in order to comply with this section. This subdivision shall not  
40 apply to the delivery, sale, or transfer of a short-barreled rifle, or

1 short-barreled shotgun, as defined in Section 12020, or to a  
2 machinegun as defined in Section 12200, or to an assault weapon  
3 as defined in Sections 12276, 12276.1, and 12276.5.

4 (B) For every identification number request received pursuant  
5 to this section, the department shall determine whether the intended  
6 recipient is on the centralized list of firearms dealers pursuant to  
7 this section, or the centralized list of exempted federal firearms  
8 licensees pursuant to subdivision (a) of Section 12083, or the  
9 centralized list of firearms manufacturers pursuant to subdivision  
10 (f) of Section 12086.

11 (C) If the department finds that the intended recipient is on one  
12 of these lists, the department shall issue to the inquiring party, a  
13 unique identification number for the intended delivery, sale, or  
14 transfer. In addition to the unique verification number, the  
15 department may provide to the inquiring party information  
16 necessary for determining the eligibility of the intended recipient  
17 to receive the firearm. The person intending to deliver, sell, or  
18 transfer the firearm shall provide the unique verification number  
19 to the recipient along with the firearm upon delivery, in a manner  
20 to be determined by the department.

21 (D) If the department finds that the intended recipient is not on  
22 one of these lists, the department shall notify the inquiring party  
23 that the intended recipient is ineligible to receive the firearm.

24 (E) The department shall prescribe the manner in which the  
25 verification numbers may be requested via the Internet, or by  
26 alternate means of communication, such as by facsimile or  
27 telephone, including all required enrollment information and  
28 procedures.

29 (2) (A) On or after January 1, 1998, within 60 days of bringing  
30 a pistol, revolver, or other firearm capable of being concealed upon  
31 the person into this state, a personal handgun importer shall do  
32 one of the following:

33 (i) Forward by prepaid mail or deliver in person to the  
34 Department of Justice, a report prescribed by the department  
35 including information concerning that individual and a description  
36 of the firearm in question.

37 (ii) Sell or transfer the firearm in accordance with the provisions  
38 of subdivision (d) or in accordance with the provisions of an  
39 exemption from subdivision (d).

1 (iii) Sell or transfer the firearm to a dealer licensed pursuant to  
2 Section 12071.

3 (iv) Sell or transfer the firearm to a sheriff or police department.

4 (B) If the personal handgun importer sells or transfers the pistol,  
5 revolver, or other firearm capable of being concealed upon the  
6 person pursuant to subdivision (d) of Section 12072 and the sale  
7 or transfer cannot be completed by the dealer to the purchaser or  
8 transferee, and the firearm can be returned to the personal handgun  
9 importer, the personal handgun importer shall have complied with  
10 the provisions of this paragraph.

11 (C) The provisions of this paragraph are cumulative and shall  
12 not be construed as restricting the application of any other law.  
13 However, an act or omission punishable in different ways by this  
14 section and different provisions of the Penal Code shall not be  
15 punished under more than one provision.

16 (D) (i) On and after January 1, 1998, the department shall  
17 conduct a public education and notification program regarding this  
18 paragraph to ensure a high degree of publicity of the provisions  
19 of this paragraph.

20 (ii) As part of the public education and notification program  
21 described in this subparagraph, the department shall do all of the  
22 following:

23 (I) Work in conjunction with the Department of Motor Vehicles  
24 to ensure that any person who is subject to this paragraph is advised  
25 of the provisions of this paragraph, and provided with blank copies  
26 of the report described in clause (i) of subparagraph (A) at the time  
27 that person applies for a California driver's license or registers his  
28 or her motor vehicle in accordance with the Vehicle Code.

29 (II) Make the reports referred to in clause (i) of subparagraph  
30 (A) available to dealers licensed pursuant to Section 12071.

31 (III) Make the reports referred to in clause (i) of subparagraph  
32 (A) available to law enforcement agencies.

33 (IV) Make persons subject to the provisions of this paragraph  
34 aware of the fact that reports referred to in clause (i) of  
35 subparagraph (A) may be completed at either the licensed premises  
36 of dealers licensed pursuant to Section 12071 or at law enforcement  
37 agencies, that it is advisable to do so for the sake of accuracy and  
38 completeness of the reports, that prior to transporting a pistol,  
39 revolver, or other firearm capable of being concealed upon the  
40 person to a law enforcement agency in order to comply with

1 subparagraph (A), the person should give prior notice to the law  
2 enforcement agency that he or she is doing so, and that in any  
3 event, the pistol, revolver, or other firearm capable of being  
4 concealed upon the person should be transported unloaded and in  
5 a locked container.

6 (iii) Any costs incurred by the department to implement this  
7 paragraph shall be absorbed by the department within its existing  
8 budget and the fees in the Dealers' Record of Sale Special Account  
9 allocated for implementation of this subparagraph pursuant to  
10 Section 12076.

11 (3) Where a person who is licensed as a collector pursuant to  
12 Chapter 44 (commencing with Section 921) of Title 18 of the  
13 United States Code and the regulations issued pursuant thereto,  
14 whose licensed premises are within this state, acquires a pistol,  
15 revolver, or other firearm capable of being concealed upon the  
16 person that is a curio or relic, as defined in Section 478.11 of Title  
17 27 of the Code of Federal Regulations, outside of this state, takes  
18 actual possession of that firearm outside of this state pursuant to  
19 the provisions of subsection (j) of Section 923 of Title 18 of the  
20 United States Code, as amended by Public Law 104-208, and  
21 transports that firearm into this state, within five days of that  
22 licensed collector transporting that firearm into this state, he or  
23 she shall report to the department in a format prescribed by the  
24 department his or her acquisition of that firearm.

25 (4) (A) It is the intent of the Legislature that a violation of  
26 paragraph (2) or (3) shall not constitute a "continuing offense" and  
27 the statute of limitations for commencing a prosecution for a  
28 violation of paragraph (2) or (3) commences on the date that the  
29 applicable grace period specified in paragraph (2) or (3) expires.

30 (B) Paragraphs (2) and (3) shall not apply to a person who  
31 reports his or her ownership of a pistol, revolver, or other firearm  
32 capable of being concealed upon the person after the applicable  
33 grace period specified in paragraph (2) or (3) expires if evidence  
34 of that violation arises only as the result of the person submitting  
35 the report described in paragraph (2) or (3).

36 (g) (1) Except as provided in paragraph (2), (3), or (5), a  
37 violation of this section is a misdemeanor.

38 (2) If any of the following circumstances apply, a violation of  
39 this section is punishable by imprisonment in the state prison for  
40 two, three, or four years.



1 (A) If the violation is of paragraph (1) of subdivision (a).

2 (B) If the defendant has a prior conviction of violating the  
3 provisions, other than paragraph (9) of subdivision (a), of this  
4 section or former Section 12100 of this code or Section 8101 of  
5 the Welfare and Institutions Code.

6 (C) If the defendant has a prior conviction of violating any  
7 offense specified in subdivision (b) of Section 12021.1 or of a  
8 violation of Section 12020, 12220, or 12520, or of former Section  
9 12560.

10 (D) If the defendant is in a prohibited class described in Section  
11 12021 or 12021.1 of this code or Section 8100 or 8103 of the  
12 Welfare and Institutions Code.

13 (E) A violation of this section by a person who actively  
14 participates in a “criminal street gang” as defined in Section 186.22.

15 (F) A violation of subdivision (b) involving the delivery of any  
16 firearm to a person who the dealer knows, or should know, is a  
17 minor.

18 (3) If any of the following circumstances apply, a violation of  
19 this section shall be punished by imprisonment in a county jail not  
20 exceeding one year or in the state prison, or by a fine not to exceed  
21 one thousand dollars (\$1,000), or by both that fine and  
22 imprisonment.

23 (A) A violation of paragraph (2), (4), or (5) of subdivision (a).

24 (B) A violation of paragraph (3) of subdivision (a) involving  
25 the sale, loan, or transfer of a pistol, revolver, or other firearm  
26 capable of being concealed upon the person to a minor.

27 (C) A violation of subdivision (b) involving the delivery of a  
28 pistol, revolver, or other firearm capable of being concealed upon  
29 the person.

30 (D) A violation of paragraph (1), (3), (4), (5), or (6) of  
31 subdivision (c) involving a pistol, revolver, or other firearm capable  
32 of being concealed upon the person.

33 (E) A violation of subdivision (d) involving a pistol, revolver,  
34 or other firearm capable of being concealed upon the person.

35 (F) A violation of subdivision (e).

36 (4) If both of the following circumstances apply, an additional  
37 term of imprisonment in the state prison for one, two, or three  
38 years shall be imposed in addition and consecutive to the sentence  
39 prescribed.

1 (A) A violation of paragraph (2) of subdivision (a) or subdivision  
2 (b).

3 (B) The firearm transferred in violation of paragraph (2) of  
4 subdivision (a) or subdivision (b) is used in the subsequent  
5 commission of a felony for which a conviction is obtained and the  
6 prescribed sentence is imposed.

7 (5) (A) A first violation of paragraph (9) of subdivision (a) is  
8 an infraction punishable by a fine of fifty dollars (\$50).

9 (B) A second violation of paragraph (9) of subdivision (a) is an  
10 infraction punishable by a fine of one hundred dollars (\$100).

11 (C) A third or subsequent violation of paragraph (9) of  
12 subdivision (a) is a misdemeanor.

13 (D) For purposes of this paragraph each application to purchase  
14 a pistol, revolver, or other firearm capable of being concealed upon  
15 the person in violation of paragraph (9) of subdivision (a) shall be  
16 deemed a separate offense.